

Exhibit 511

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AUTHENTICOM, INC.,

Plaintiff,

-vs-

Case No. 17-CV-318-JDP

CDK GLOBAL, LLC and
THE REYNOLDS AND REYNOLDS COMPANY,

Madison, Wisconsin
June 28, 2017
8:02 a.m.

Defendants.

STENOGRAPHIC TRANSCRIPT OF THIRD DAY OF EVIDENTIARY HEARING
HELD BEFORE CHIEF U.S. DISTRICT JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Godfrey & Kahn S.C.
BY: JENNIFER L. GREGOR
One East Main Street, Suite 500
Madison, Wisconsin 53701

Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.
BY: MICHAEL N. NEMELKA
AARON M. PANNER
DAVID L. SCHWARZ
DEREK T. HO
JOANNA T. ZHANG
JOSHUA HAFENBRACK
KEVIN J. MILLER
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Jennifer L. Dobbratz, RMR, CRR, CRC
U.S. District Court Federal Reporter
United States District Court
120 North Henry Street, Rm. 410
Madison, Wisconsin 53703
(608) 261-5709

APPEARANCES CONTINUED:

Also appearing: STEPHEN COTTRELL, Authenticom
STEVE ROBB, IT Support

For the Defendant CDK Global, LLC:

Foley & Lardner
BY: JEFFREY A. SIMMONS
150 East Gilman Street
Madison, Wisconsin 53701

Mayer Brown LLP
BY: BRITT M. MILLER
MATTHEW D. PROVANCE
71 South Wacker Drive
Chicago, Illinois 60606

Mayer Brown LLP
BY: MARK W. RYAN
1999 K Street, N.W.
Washington, D.C. 20006

Also appearing: LEE BRUNZ, General Counsel, CDK Global, LLC
NICK HEY, IT Support

For the Defendant The Reynolds and Reynolds Company:

Perkins Coie LLP
BY: CHARLES G. CURTIS, JR.
1 East Main Street, Suite 201
Madison, Wisconsin 53703

Sheppard Mullin Richter & Hampton, LLP
BY: MICHAEL P. A. COHEN
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

Gibbs & Bruns LLP
BY: AUNDREA K. GULLEY
BRIAN T. ROSS
BRICE A. WILKINSON
1100 Louisiana Street, Suite 5300
Houston, Texas 77002

Also appearing: ROBERT SCHAEFER and KELLY HALL,
The Reynolds and Reynolds Company

1 provides that service. It does it actually better than the
2 defendants do for a reason, and Authenticom charges 25 to \$50 a
3 month for doing that service, or something on that order, and
4 other competitive providers do too and charge the same, and so
5 we know what that costs, and so that is not what the DMS
6 providers are charging for. That is not why the DMS -- that is
7 not why vendors are willing and forced to pay these outrageous
8 fees.

9 And, you know, it's interesting actually, there's a case
10 from the Seventh Circuit called *Assessment Technologies of WI v.*
11 *WIREdata*, and the cite is 350 F.3d 640, and it's a case that we
12 cited in our reply papers, and it makes for very interesting
13 reading. The case starts this way: "This case is about the
14 attempt of a copyright owner to use copyright law to block
15 access to data that not only are neither copyrightable nor
16 copyrighted, but were not created or obtained by the copyright
17 owner. The owner is trying to secrete the data in its
18 copyrighted program, a program the existence of which reduced
19 the likelihood that the data would be retained in a form in
20 which they would have -- in which they would have been readily
21 accessible. It would be appalling if such an attempt could
22 succeed." Now -- so if Authenticom -- and I think that that
23 analysis really applies quite well here.

24 Now, I don't want to anticipate an argument that's not going
25 to be made by the defendants, but I do know that in the opening

1 Mr. Cohen referred to the Computer Fraud and Abuse Act, and
2 there was a suggestion that somehow Authenticom was violating
3 that federal statute. Now, we learned yesterday -- first of
4 all, CDK has never -- didn't say that in their opening, and I
5 assume they will not say it in their closing for lots of
6 reasons, not least that CDK's contract permits dealers to
7 authorize agents to access data under the contract, and the
8 dealers had done so with CDK's express approval until CDK
9 changed its mind about whether that was economical in 2015.

10 Now, Reynolds say that dealers shouldn't have granted
11 Authenticom access, but that's a matter of contract, right? The
12 dealers did authorize Authenticom to pull the data, and the
13 federal statute is not a contract enforcement mechanism. But
14 the more important point is this: If Reynolds could not
15 lawfully restrict the dealers from authorizing Authenticom to
16 access their data, if that was a violation of the antitrust
17 laws, any issue about that federal statute just disappears,
18 okay? In other words, what's important about this is that none
19 of the defendants' arguments about contract law, about the terms
20 of their agreements with the dealers, changed the calculus about
21 the likelihood of success on the merits. If we've shown a
22 likelihood that these provisions and this conduct violated the
23 antitrust laws, then they can't enforce those provisions and --

24 THE COURT: Help me understand that. So let's just
25 start, I guess, with a hypothetical, but not entirely

1 hypothetical, but Reynolds on its own independently, assuming
2 that -- think of it as before February 2015. Reynolds -- I'll
3 make it a question. Does Reynolds commit an antitrust violation
4 by imposing a contractual restriction that prevents dealers from
5 giving the usernames to Authenticom?

6 MR. PANNER: Yes.

7 THE COURT: Okay. And why is that?

8 MR. PANNER: Because, again, there's an integration
9 services function that's being provided in the market. We
10 learned that yesterday. Reynolds is using its market power in
11 the DMS market to foreclose competition in the market for
12 integration services. They're doing that in part by barring the
13 dealer -- barring dealers from providing their data in an
14 efficient way to Authenticom. They're also entering into
15 contracts with vendors that bar those vendors from obtaining
16 that data from Authenticom, using Authenticom's data integration
17 services, and Reynolds has at that point over 30% of the market.
18 They have substantial market power because the dealers are
19 locked in --

20 THE COURT: So at that point it's a vertical exclusive
21 dealing.

22 MR. PANNER: Exactly. It's also a vertical tying
23 arrangement. Tying is actually also a per se violation of the
24 antitrust laws. Again, these are the kinds of issues that get
25 into the interesting antitrust stuff that, you know, that